A SIXTEENTH AMENDMENT.

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THE unabridged and exclusive right to fix the qualifications of voters was reserved to and exercised by the several States of the Union until the adoption of the Fifteenth Amendment to the Constitution. That right still exists, subject only to the prohibition expressed in that Amendment. The removal of that prohibition would leave the several States vested with the exclusive power to regulate the suffrage, for all purposes, within their respective jurisdictions. The provision of section 1 of the Fourteenth Amendment, to the effect that no State shall abridge the privileges or immunities of any citizen of the United States, has no reference to the right to vote, because the right to vote in any State is not now and never was a privilege or immunity guaranteed to any person by reason of such citizenship.

The fundamental theory of our Government is that the United States and the several States shall each be and remain supreme in their respective spheres of governmental action. All powers not expressly, or by reasonable intendment, granted by the Constitution to the United States were reserved to the States and the people. The Thirteenth Amendment, abolishing slavery, was the first abridgement of the power of the States to establish the *status* of their own citizens, and to control their own affairs. The second limitation upon that power was section 4 of the Fourteenth Amendment, which forbids the United States or any State to assume or pay any debt or obligation incurred in aid of insurrection or rebellion, or for the loss or emancipation of any slave. These two limitations upon the power of the States to act with reference to their own affairs, have received the approval of all the people of the United States, and no enlightened citizen would, at this time, have them, or either of them, abrogated. These two

are the only abridgements expressly made by the Constitution of the otherwise unabridged powers of the States to act without restraint, in all matters pertaining to their own local governments. Neither of them increases in any degree the powers of the Federal Government. They have no centralizing effect. They forbid the States to do certain things, but they do not give the United States any power to do the same things. The Federal and State Governments are alike subject to their prohibitions. Taken together, they meet the demands of the enlightened conscience of civilization and have the approval of all good citizens.

The scheme of reconstruction adopted after the Civil War, and necessarily influenced to some extent by the exasperated condition of the public mind at that time, included the Thirteenth Amendment, abolishing slavery, and the Fourteenth and Fifteenth Amendments. When we consider the immense sums of money spent by the United States; the vast debt incurred; the lives lost; the homes made desolate; the futures of a host of good men ruined by mutilation and disease, and all the uncatalogued evils suffered by the people in the maintenance of the law in the Civil War, which was deemed to have been occasioned by a useless revolt against an authority which did not oppress, we must stand amazed at the moderation of the conquerors. But, as praiseworthy as that moderation now seems to be, it involved a radical change in the relation of the General Government to the States, which was, unfortunately, unwise in its theory as well as imperfect in its expression.

Section 2 of the Fourteenth Amendment and the Fifteenth Amendment are the only provisions pertinent to this discussion, and, for convenience of reference, they are here reproduced:

"XIV., §2.—Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, *the executive and judicial officers of a State or the members of the Legislature thereof*, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

"XV., §1.—The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

The Fifteenth Amendment is virtually a dead letter. It was so formulated that it could be legally annulled and abrogated by every State which was willing to enact the legislation necessary to avoid its effect. It has been so annulled and abrogated, and has proved wholly inefficacious for the main purpose for which it was adopted. It is a demonstrated failure and no longer has any usefulness, except as evidence of the incapacity of its authors to do what they intended to do. It stands now virtually repealed by the ingenuity of those whom it was intended to restrain. It is a monument to the inability of statesmen who discovered a way how to do a thing which turned out to be a way how not to do it. It encumbers the Constitution.

Up to this date, both of the constitutional provisions above quoted are as though they had never been enacted. No serious attempt has been made to enforce the penalty prescribed by section 2 of the Fourteenth Amendment, and the States which have annulled the Fifteenth Amendment, in their several jurisdictions, still have representation in the Electoral College and in Congress, virtually based upon vast numbers of disfranchised voters, who were not disfranchised for participation in rebellion or other crime. No reasonable man can expect that the States which, on account of these conditions, are deprived of their just representation in the Electoral College and in Congress, will long suffer that deprivation; and the question what remedy shall be chosen to cure this evil, will soon become one which will demand and receive a just and equitable settlement. The people will not permit the fundamental law of the land to be forever disobeyed and held for naught. But no fair man can fail to see the difficult political problem which these constitutional provisions presented to the people of the Southern States. Their chief complaint has been that the Fifteenth Amendment, if honestly enforced or acquiesced in, takes from the intelligent and property-owning class of people in that section the direction of their local affairs, and gives it entirely, or in a great measure, to an ignorant constituency, wholly incompetent to manage the affairs of any government whatever. The evils they complain of are not fancied, but actual and disastrous. They are such as could not be endured, and State after

State, when the people had become weary of the odium which attached itself to open force and covert fraud, provided legal devices, more or less ingenious, to avoid the effects of the Fifteenth Amendment. They chose rather to risk the penalties prescribed by section 2 of the Fourteenth Amendment, than to surrender the control of their local affairs to the management of an ignorant and incompetent constituency. Whether they were governed by any proper code of political ethics or not, is a question which need not be discussed. They were certainly impelled by considerations of self-preservation; and, while they may be blamed by rigid political moralists, the sound common sense of the people will not fail to recognize the threatening emergency under which they acted.

Section 2 of the Fourteenth Amendment is open to just criticism, both as to matter of substance and matter of form. Both this section and the Fifteenth Amendment, taken together as part of one plan, are the converse of what they ought to have been. They are based upon the denial or abridgement of the right to vote, when they ought to have been based upon the granting and extension of that right. They tacitly assume that all male citizens of the United States are entitled to vote at all elections, and they provide a penalty for any abridgement of that right; when they ought to have assumed that the right to vote was one which might, or might not, be given to such citizens by the States respectively, and by each State to the extent that it saw fit to prescribe, and the penalty ought to have been made to depend upon the extent to which the several States exercised their power to limit the suffrage of those citizens in national elections, with which alone the National Government has any just concern. The scheme ought to have contemplated an inducement to extend the suffrage, instead of providing a penalty for abridging or denying it.

But, defective as the plan is in the respect mentioned, it is also a radical departure from the established scheme of our government. The provision of section 2 of the Fourteenth Amendment providing a penalty for abridging or denying the right to vote for the executive and judicial officers of a State or members of the Legislature thereof, is an unwise, punitive provision, enacted, not for any good purpose affecting the whole people of the United States, but for the sole purpose of punishing the people of certain

States for refusing to surrender their local governments to virtual anarchy. It is an unjust interference by the United States with matters which in no wise concern its government. It is a reversal of the well-established relation which theretofore existed between the Federal and State Governments, and an unjustifiable departure from ancient methods. To enforce it will re-open wounds that are well-nigh healed, and entail again the bitterness of sectional strife.

Section 2 of the Fourteenth Amendment is not and cannot be uniform in its operation, and is therefore unjust. It links together two bases of representation. The primary basis of representation is the number of inhabitants, but the penalty for denying or abridging the right to vote is based upon the proportion which the number of the disfranchised bears, not to the number of the inhabitants, but to the number of male citizens twenty-one years of age. Inasmuch as the number of citizens of the United States of the age of twenty-one years in any one State does not bear the mathematical relation to the number of its inhabitants that the number of such citizens in any other State bears to the inhabitants of that State, it is apparent that this section cannot have a uniform operation. Illustrations could be given but they are unnecessary at this time. They can be supplied by any one curious and industrious enough to consult the report of the Census.

There is another objection to section 2 of the Fourteenth Amendment which goes to the practicability of its enforcement. Suppose that a State denies to any citizen of the United States the right to vote, because he failed to pay a poll-tax. The number of such persons would not in any two years bear the same proportion to those who paid the tax, and what just rule could be devised under which the penalty imposed by this section could be enforced? Any law of Congress enforcing that penalty must necessarily be specific and self-acting. It could not leave the extent of the penalty to be fixed by any executive or judicial officer, to be changed as the conditions changed. Every ten years Congress would be called upon, in the discharge of its legislative duty, to fix the representation of the several States in Congress and in the Electoral College for the succeeding ten years. What prior year would it take as a criterion, when it came to consider the abridgement or denial of the right to vote based upon non-payment of a

poll-tax? Other denials of that right for other reasons might be referred to as illustrating the fundamental mistake first above referred to, namely, the failure to hold out an inducement to grant the suffrage, instead of prescribing a penalty for denying or abridging it, but this one is sufficient at this time. The difficulties in the way of enforcing section 2 of the Fourteenth Amendment may not be insurmountable; but, apart from the sectional bitterness that would be aroused by any attempt to do so, those difficulties would tax severely the ingenuity of our lawmakers.

The remedy for this unfortunate condition of the fundamental law seems to be to do now what might have been done in the first place, and probably would have been done, if calm consideration had dispelled the idea that it was a case of imposing penalties upon wrong-doers. If some such remedy is not found, the provisions of section 2 of the Fourteenth Amendment, rigorous as they are, must be enforced. Such a remedy can be found. Adopt a Sixteenth Amendment which might be substantially as follows:

"XVI., §1.—The Fifteenth Amendment to the Constitution of the United States and sections 2 and 3 of the Fourteenth Amendment thereto are hereby repealed and abrogated.

"§2.—Representatives shall be apportioned among the several States according to the number of male inhabitants of the age of twenty-one years and over, being citizens of the United States, who are permitted by law in the States respectively to vote for the choice of electors for President and Vice-President of the United States and for Representatives in Congress.

"§3.—Congress shall have power, by laws uniform in their operation, to fix the time and prescribe the manner of holding elections for the choice of electors for President and Vice-President of the United States and Representatives in Congress, and the power to enforce all the provisions of this article by any appropriate legislation."

Section 3 of the Fourteenth Amendment is included in the above suggestion because it refers solely to the imposed disabilities of those who were in rebellion, and is no longer of any force except as an unpleasant reminder of internecine war.

The above proposed amendment places the power to regulate the suffrage where it was before the Fifteenth Amendment was adopted. It permits the States, as far as their local elections are concerned, to abridge or deny the right to vote thereat as they see fit, and visits them with no penalty whatever for so doing. It simply provides that their representation in the Electoral College

and in Congress shall be as they severally choose to make it by affirmative legislation. If any State desires a maximum national representation it will, by law, permit all male citizens of the United States twenty-one years of age and over to vote for electors and Representatives, as is now the case under the Constitutions of a large majority of the States of the Union. If any State concludes that the evils of an extended suffrage in that regard more than counterbalance the benefits to be derived from a full national representation, it can so provide. The Federal Government will have removed its hand from any control of local elections in the States, and returned to the States the power to prescribe the qualifications of voters at all elections, retaining only the power to fix the time and prescribe the manner of holding such elections as affect its own administration. It will have substituted persuasion for penalties, simplicity for complexity, certainty for uncertainty and uniformity for confusion. The impending struggle for the enforcement of the penalties named in section 2 of the Fourteenth Amendment would be happily averted, and all its attendant evils avoided. A free choice to be made by the complaining States would be substituted for a penalty imposed upon them for assuming and retaining control of their own local governments, and saving these from ruin and anarchy.

Some such measure ought to receive the ready and earnest approval of all fair-minded men in the South. We have had enough of strife and sectional bitterness. The people who are now deprived of their just representation in the Electoral College and in Congress would deeply regret the necessity of a sectional struggle to get their rights; but, unless some other remedy is found, they will be forced to apply the one they now have. The Southern States have an influence in national affairs to which they are not rightfully entitled. They have had such an influence since the foundation of the government, and they cannot reasonably expect the other States of the Union, who have done no wrong to the Constitution, to submit forever to an unjust and unlawful discrimination against them.

No matter what sympathy reasonable men may have for them in the unhappy conditions imposed upon them by the Fourteenth and Fifteenth Amendments, the Southern States may rest assured that all that sympathy would disappear if they stubbornly refused to accept some such compromise as that above suggested, and per-

sisted in claiming in the national councils a weight which they have always had and to which they are no longer entitled. The oppression to which they have been subjected is no justification for allowing them a representation in the Electoral College and in Congress based upon vast numbers of citizens of the United States whom they will not permit to vote at national elections. The States which are deprived of their fair share of representation will certainly, sooner or later, insist upon the enforcement of the Fourteenth Amendment and the imposition of the penalty therein provided for. Their people belong to a patient and long-suffering race and are slow to act; but our recent history has shown that, when they conclude that the time for action has arrived, no obstacles are sufficient to stay their progress or turn them from their purpose. This is not a matter of partisan politics or sectional prejudice. It touches the self-respect of a very large majority of the people of the United States. The present conditions offend their sense of justice. They want no more strife with their brethren. They would much prefer a remedy which would permit a gradual, orderly and regular extension of the suffrage in national elections, to the enforcement of the onerous penalties now prescribed by the Constitution. They do not wish to have the Federal Government interfering in the purely local elections of the States. They are willing to deny that power to the United States, but they are not willing to submit forever to the discrimination from which they now suffer.

The situation is grave enough to enlist the best efforts and the most enlightened judgment of our statesmen in devising some fair and just method of settling this great and serious question. It is now pressing for the considerate attention of our people, and it will continue to urge itself upon them until they settle it aright.

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